

Anne Horton, Widow,
Joshua Horton, Sen. } Appel'
Joshua Horton, Jun. }

Anthony Kirton, and } Respond'
John Kirton, }

The Respondents C A S E.

21. Octo. 1695.

24. Octo. 1695.

R OGER WHITLEY, Esq; being Seized in Fee of the Lands in Question for 1200 l. Fine, and 10 l. per Ann. Rent, did grant the same to Joseph Horton and his Heirs, during the Lives of the said Joseph, Anne his Wife, and Joshua his Brother, Two of the Appellants.

And he being a Mean Man and wanting Money, Re-demised the Premises to Sir John Manwaring for 99 Years, in Trust for Whitley to Secure the Payment of the said Fine and Interest, and in Default of Payment at certain Days therein appointed, Sir John to Enter and Raise the same by the mean Profits; and after that to be in Trust for Joseph, for the Residue of the Term.

But the said Joseph having no visible nor lawful way to Raise Money to make due Payment at the stated Times, went on in that unlawful way which he had used for many Years before, till he was taken in the Fact.

8. Apr. 1701.

And by a Special Commission was Tried, Convicted, and Attainted of High-Treason, upon the Act of the 8. & 9. Wm. 3. C. 26. Intituled, An ACT for preventing the Counterfeiting the Current Coin of this Kingdom, but broke Goal and escaped Execution, and is said to be since Dead.

And by an Inquisition it was found, that the Convict was posselt for a long Term of Years still to come of a very considerable Estate in the City of Chester, which was Assigned to the Appellant Joshua, in Trust for Joseph, which the Appellants do still Enjoy.

1. June, 1702.

And by another Inquisition it was found, that the said Convict was Seized of the Lands in Question for Three Lives as aforesaid, subject to Manwaring's Mortgage and several other great Incumbrances, and the said Lands so subject were Seized into the Queen's Hands, and continued so for Four Years after.

During which Time the Appellants made pressing Applications to Her Majesty for Favour and Restitution.

But Her Majesty not willing to shew the least Favour to such Offenders, nor to part with Money to discharge the said Incumbrances; and it being improper for the Crown to hold as Under-tenant to a Subject,

Dated 26. July 1706.

Was pleased by Her Letters Patents to grant the Premises and all her Interest therein to the Respondents under a valuable Rent, and Covenants on the Respondents Part to discharge the Incumbrances, and to pay the Rent so reserved to the Crown.

Mich. Term. 1706.

Whereupon the Respondents did Exhibit their Bill in the Exchequer, being the Court of Revenue against the Appellants and all other proper Persons, to establish the Right of the Crown, and to redeem the Premises, and for an Account of the mean Profits thereof, to which the Defendants (after much Delay) appeared.

And by Answer Confess'd the Attainder, but insisted that the Premises were not thereby forfeited, because in the said Statute upon which this Attainder is grounded, there is a Proviso, That no Attainder upon that Act shall corrupt the Blood or forfeit Dower, and inferred that thereby the Forfeiture of the Estate was prevented.

And after many Dilatories the Cause came to a Hearing in the said Court, and was solemnly Argued by the Appellants Council, who insisted upon the said Proviso, that saving the Blood did (by Implication) save an Inheritance also.

But the Respondents for Answer did insist, that in an Attainder for Felony only that may seem probable, because Attainders in Felony do not forfeit any Lands to the Crown, but only corrupts the Blood and thereby prevents a Discent, and is the same in Consequence of Law, as if the Offender had died without Heir unattainted.

In either of which Cases there being no Person that could make Title under the Offender to the Inheritance, his Tenure is determined.

Wherefore the Land by Law may return to the Lord of the Mannor, from whence it came in Lieu of his Services by which they were held of him, not as a Forfeiture but as an Escheat only for want of a Tenant, and are become Parcel of the Demeasnes again.

And when the Blood is saved in Case of Felony the Tennant is not dead without an Heir, and therefore the Land cannot Escheat to the Lord for want of a Tennant to answer the Services.

But this Case being an Attainder for High-Treason, differs toto celo from Attainders for Felony.

26 H. 8. C. 13.
33. H. 8. C. 2.
5 & 6 E. 6. C. 11.

For by the expresse Words of these Statutes, the Lands of Persons Attainted for any manner of High-Treason are Forfeited to and actually Vested in the Crown, against the Offender and his Heirs, and against the Lord of whom they are Holden also, to all Intents and Purposes; Saving the Right of all Persons, except the Heirs of him Attainted.

And it cannot be denied, but that this entire Estate for Three Lives is but a Freehold, and no Inheritance, nor the Wife Dowable thereof, and was before and until the Attainder in the Convict either to Alien to any, or to Forfeit to the Reversioner, a fortiori to the Crown.

And an Attainder for Treason do's, alienum facere, as much (and more) as the Offender could have made or done by any Grant or Means before Attainder; it being a Rule in Law, that whatever a Person had Power to Grant, he shall as fully Forfeit by Attainder for High-Treason.

Therefore to save the Estate by any Implication or Construction, would be inconsistent with and directly repugnant to the very Letter of the several Statutes aforesaid; which Statutes expressly give to and actually Vest in the Crown, all the Right, Title and Interest the Offender had in any Lands, Tenements, &c. with a Saving of the Right of all Persons, except the Heirs of him Attainted, and yet the Heir, by such a supposed Implication only, would totally defeat the Crown.

And it has been solemnly held by all the Judges of England, that no Implication ought to be admitted for a Subject against the Right and Interest of the Crown.

Regula.

And such a Construction of this Proviso as the Appellants would have to be made upon it, is contrary to the General Rule in Construction of Statutes.

For whenever Two Statutes seem to cross each other, such Exposition and Construction must be made of both (if possible) so as that both may stand in Force.

Which will be so in this Case, if the Lands by this Attainder and by the aforesaid Statutes be Forfeited to the Crown, and the Blood by this Proviso not corrupted; the Offender's Heirs thereby will continue Inheritable to him, or any other Ancestor, tho' Attainted of Felony or any other Crime, except Attainders for High-Treason only; and so this Proviso, and all the other Statutes, will thus consist and have their full Operation and Effect, which otherwise cannot be.

And it is regularly true, that all Provisoes and Exceptions must be taken strictly, and here the Blood only being expressly Saved, no more shall be intended to be Saved thereby; for Expressum facit cessare tacitum.

And after much Debate, both at the Bar and at the Bench, the Court was of Opinion,

THAT this whole Estate was Forfeited to the Crown.

And therefore Decreed, That the Respondents should Redeem and should have an Account of the Profits, and be let into the Possession of the Premises; which Decree is conceived to be Just.

WHEREFORE it is Humbly Prayed, That this DECREE may be Affirmed; and the APPEAL dismiss'd, with Costs.

T. PARKER.

SAM. DODD.